Alanis Airport Services, Inc. and Transport Workers Union of America, Local 500, Petitioner. Case 12–RC-7753

April 14, 1995

DECISION ON REVIEW AND ORDER

By Members Browning, Cohen, and Truesdale

On September 23, 1994, the Regional Director for Region 12 issued a Decision and Direction of Election in the above-entitled proceeding. She found that the unit sought by the Petitioner, Transport Workers Union of America, Local 500, and by the Intervenor, International Association of Machinists and Aerospace Workers, District Lodge 40, consisting of all full-time and regular part-time passenger baggage handlers employed by the Employer, Alanis Airport Services, Inc., at Miami International Airport, is an appropriate unit. She additionally found, however, that the Intervenor, because of its involvement with a company that intends to engage in competition with the Employer, has a disqualifying conflict of interest and should be denied intervenor status.

Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Intervenor filed a timely request for review of the Regional Director's decision, contending that the mere possibility that a conflict of interest may arise in the future does not present a clear and present danger of a current conflict of interest, and that the evidence does not establish that the Intervenor controls the company. On October 28, 1994, the Board granted the Intervenor's request for review. The election was held as scheduled on October 28, 1994, and the ballots were impounded pending the Board's Decision on Review. No briefs on review were filed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issue on review and has decided to reverse the Regional Director's conclusion and to find that the Intervenor is not disqualified because of a conflict of interest.

The Employer, a Florida corporation, is engaged in the business of providing passenger baggage handling services at the Miami International Airport pursuant to a contract with AMR Ground Services Corporation. Operational and regulatory requirements at Miami International Airport limit the number of companies eligible to provide various services, including baggage handling, to seven holders of permits issued by the Metro Dade Commission. Those permit holders can then subcontract such work to other companies, such as the Employer.

Several airlines, including United Airlines, are attempting to persuade the Metro Dade Commission to issue them general permits that would allow them to hire directly and provide those services themselves. Hearings have been held by the Metro Dade Commission on this matter, but no decision has been rendered. United Airlines has a collective-bargaining agreement with the International Association of Machinists and Aerospace Workers (IAM). That contract requires that any subcontracted work performed for United Airlines must be done by an IAM-represented contractor. Miami Airport Skycaps, Inc. (MAS) was formed with the objective of securing United Airlines' baggage handling work for IAM members in the event that United Airlines succeeds in obtaining a general permit from the Metro Dade Commission. MAS has not applied to obtain its own permit to operate at Miami International Airport.

MAS is owned by 55 shareholders, each of whom owns 1 share of stock. Almost all shareholders are baggage handlers who work for various companies at the Miami International Airport, including the Employer. Two of the shareholders are officers of the Intervenor (president and secretary-treasurer) who also serve on MAS' five-person board of directors. Intervenor's president was also one of the two incorporators and serves as MAS' registered agent. The articles of incorporation of MAS provide that the corporation may issue shares only to dues-paying members of the IAM; that only one share may be issued to any individual; and that any change in the corporation's bylaws, the election of directors to the board of directors, and the appointment of officers requires a unanimous vote of the common stock.1

The Board has long held that a union may not represent the employees of an employer if a conflict of interest exists on the part of the union such that a good-faith collective-bargaining relationship between the union and the employer could be jeopardized. *Bausch & Lomb Optical Co.*, 108 NLRB 1555 (1954). In order to find that a union has a disabling conflict of interest, the Board requires a showing of a "clear and present" danger interfering with the bargaining process. The burden on the party seeking to prove this conflict of interest is a heavy one. *Garrison Nursing Home*, 293 NLRB 122 (1989), citing *Quality Inn Waikiki*, 272 NLRB 1, 6 (1984), enfd. 783 F.2d 1444 (9th Cir. 1986).

¹The MAS shareholder baggage handlers have formed a new local, Local 626, with the object of representing MAS' employees. MAS and Local 626 share office space at a building owned by the Intervenor and two other IAM locals; they have been permitted to use this space rent-free during their initial 6-month formative period. The Intervenor's president is a member of Local 626, and has indicated that the Intervenor plans to assign the Employer's unit employees to Local 626, should the Intervenor be selected as their bargaining representative.

Contrary to the Regional Director, we find that the Petitioner has not met its heavy burden to show that the Intervenor's involvement with MAS would pose a clear and present danger of a conflict of interest interfering with the collective-bargaining process, should the Intervenor be selected as the bargaining representative of the Employer's baggage handler employees employed at Miami International Airport. MAS currently has no contracts to provide baggage handling services and has not begun business operations at Miami International Airport. Moreover, MAS has not even completed any application procedures to obtain its own permit to operate at Miami International Airport. Even if MAS were to apply for such a permit, it appears, according to the Employer, that the Metro Dade Commission may not be accepting proposals or granting permits in this regard until 1999. For this reason, even the Employer does not consider MAS a competitor.² In addition, the attempt on the part of United Airlines and other airlines to obtain a general permit that would allow them to hire directly and provide services themselves has not yet been and may never be successful. Because United Airlines cannot yet provide such services, it would be wholly speculative to conclude that MAS, which was formed in order to perform baggage handling services as United's subcontractor, will ever perform such services. Thus, a finding that the Intervenor has a disqualifying conflict of interest because of its involvement with MAS would be premature.

We find this case to be similar to *IFS Virgin Island Food Service*, 215 NLRB 174 (1974). In that case, the Board majority found no disqualifying conflict of interest where the petitioner's goal of opening up a low cost meat market allegedly in competition with the employer's business had not yet materialized. In *IFS Virgin*, a meat importer had offered to provide the petitioner with meat to sell at a reduced price, but no further steps had been taken to achieve this objective. As in that case, MAS' plans have not yet materialized and

thus there is an insufficient basis to conclude that MAS is a direct competitor of the Employer.³

Nor is there any evidence that the Intervenor, if selected as the Section 9 representative of the Employer's employees, would utilize that position to create instability in the Employer's labor relations and thereby enhance the chances that United or MAS would obtain the work.

In sum, there is insufficient evidence that MAS is a competitor of the Employer or that the Intervenor would misuse its Section 9 status as set forth above. If there is a change of circumstance, in either respect, a party may raise the issue at that time through appropriate procedures under the Act.

For the reasons stated above, we conclude that the Intervenor's involvement with MAS does not currently constitute a clear and present danger of a conflict of interest that would interfere with the bargaining process.⁴ Accordingly, the Regional Director's finding that the Intervenor has a disqualifying conflict of interest is reversed, the Intervenor is granted intervenor status in the election and in further proceedings in this matter, and the case is remanded to the Regional Director for further appropriate action.

ORDER

It is ordered that the Regional Director's finding that the Intervenor has a disqualifying conflict of interest is reversed, the Intervenor is granted intervenor status in the election and in further proceedings in this matter, and the case is remanded to the Regional Director for further appropriate action.

² The Employer did not appear or participate in the hearing but advised the hearing officer by telephone of its position. The hearing officer incorporated the Employer's statement into the record.

³ The Board majority noted in *IFS Virgin Island Food Service* that it was questionable whether such a market, if established, would compete with the business of the employer. We do not question in this case whether MAS would compete with the Employer should it obtain a permit which would allow it to do so. Nevertheless, notwithstanding this distinction between the two cases, we think *IFS Virgin Island* is sufficiently similar to the instant case to support a finding that a clear and present danger of a conflict of interest does not currently exist.

⁴We find it unnecessary to pass on the Intervenor's contention that its involvement with MAS is too limited to warrant a conclusion that the Intervenor controls or has a symbiotic relationship with MAS, because in any event, for the reasons set forth above, there is no showing that MAS is in competition with the Employer.